



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

RE-ARREST AFTER BAIL IN ADMIRALTY. — A decision of considerable importance to American ship-owners has just been handed down by the English Court of Appeals in *The Gemma*, [1899] P. D. 285. A foreign vessel collided with another, and on arriving at an English port was arrested in a suit *in rem*. Bail was given for the entire value of the ship and freight and she was released. Damages were assessed at an amount exceeding the bail, and when the ship later arrived at another English port she was re-arrested. It was held, reversing the decision of the lower court, that in an action *in rem* where the owner had appeared the damages were not limited to the value of the *res*, and that the ship was rightly re-arrested. The decision is based on a discussion by Sir Francis Jeune in *The Dictator*, [1892] P. D. 304. It is, however, *contra* to a series of decisions by Dr. Lushington and to a *dictum* of Baron Parke. It is of course true that England in its admiralty system followed the ancient Roman law, and never adopted as part of its customary law the continental doctrine of limiting the liability to the value of the ship and freight. And there seems to be no doubt that, as was urged in *The Dictator*, *supra*, the action *in rem* was given, not for the purpose of limiting the owner's liability but for the plaintiff's security. One may, however, admit that the action *in rem* was introduced for this purpose, and still contend that if the plaintiff chooses to proceed *in rem* he must work out his remedy through the *res* alone, on the ground that the whole nature of the proceedings are inconsistent with the personal liability of the owner. It does not appear to be disputed that if the owner had not appeared judgment would have to be given solely against the *res*, and the position seems well taken by Dr. Lushington in *The Volant*, 1 W. Rob. 383, that the effect of the owner's entering an appearance was not to render himself personally liable, but that he is only called to protect his interest in the vessel. The point was emphasized in the principal case that the owner has always been held personally liable for costs though in excess of the value of the *res*. It may well be that by appearing and putting the plaintiff to extra expense the owner should be held liable for costs, and it still would be for his advantage to appear. This has in all the cases been distinguished from personal liability for damages, and it would seem justly.

Even admitting that the owner might, by appearing and subjecting himself to the jurisdiction of the court, be made personally liable in an action *in rem*, a personal action being in some way engrafted on the proceedings, which the nature of the action and the wording of all the proceedings would seem to refute, the court might well have held that the *res* could not be re-arrested. For all the purposes of the present decision the bail represents the ship, and when she is released on bail of her full value she is altogether released from that action. *The Kalamazoo*, 15 Jurist, 885. Re-arrest after accepting bail seems almost bad faith. The court appear to have been largely influenced by the common law doctrine of the master's unlimited liability for his servants' torts, and were unable to see any practical distinction, after once holding the owner personally liable, between the re-arrest of the *res* and the arrest of another ship belonging to the same owner to compel payment of the judgment. As the entire sense of the mercantile community is in favor of limiting the liability to the value of the ship and freight, the court might well have followed the previous authorities, especially as in the decision in *The Dictator*, on which the court here relied, the present case was expressly excepted.